

MOU FOR UST UPGRADES
STATE, COUNTY OR MUNICIPAL GOVERNMENTS

IN THE MATTER OF

_____	:	
[Facility Name]	:	MEMORANDUM
_____	:	
[UST Registration Number]	:	OF
AND	:	UNDERSTANDING
_____	:	
[Name of Owner or Operator]	:	

Respondent(s):

This Memorandum of Understanding is issued pursuant to the authority vested in the Commissioner of the New Jersey Department of Environmental Protection (hereinafter "the Department" or "DEP") by N.J.S.A. 13:1D-1 et seq., and the Underground Storage of Hazardous Substances Act, N.J.S.A. 58:10B-1 et seq., and the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., and duly delegated to the Assistant Director, Division of Responsible Party Site Remediation pursuant to N.J.S.A. 13:1B-4.

FINDINGS

1. This Memorandum of Understanding is being executed to allow the Respondent(s), who are state, county or municipal governmental agencies in the State of New Jersey, to upgrade their underground storage tank(s) (USTs) as required by N.J.A.C. 7:14B-4.2(a). The Respondent(s) who executes this document will not incur a penalty action from the Department or the Office of the Attorney General for the duration of this Memorandum of Understanding, provided the Respondent(s) complies with the provisions set forth herein, and the UST owner or operator maintains an acceptable method of release detection for the regulated USTs at the facility. The protection from penalty action does not apply in the case of a knowing

discharge that may result in a serious threat to public health or the environment.

2. Facility Name _____
Street Address _____

Municipality _____ Zip Code _____
County _____ Tax Block and Lot Number(s) _____
Permit Number # (i.e TMS#) for Upgrade Activities (if applicable): _____
3. Current UST Owner(s):
Name _____
Affiliation _____
Address _____
City _____ State _____ Zip Code _____
State of Incorporation _____ Corporate Status _____
Telephone # _____
4. Current UST Operator(s):
Name _____
Affiliation _____
Address _____
City _____ State _____ Zip Code _____
State of Incorporation _____ Corporate Status _____
Telephone # _____
5. Contact Person\Agent for Purposes of this Memorandum of Understanding:
Name _____
Affiliation _____
Address _____
City _____ State _____ Zip Code _____
Telephone # _____
6. Has a loan or grant application pursuant to the Underground Storage Tank Finance Act been filed with the Department?
Yes _____ No _____ Date Submitted _____
7. Is the site currently, or has it ever been, under the oversight of any other program within the Department of Environmental Protection?
Yes _____ No _____
If Yes Explain: _____

8. By entering this Memorandum of Understanding, the Respondent(s) neither admits to any fact, fault or liability under any statute or regulation concerning the condition of the site nor waives any rights or defenses with regard to the site except as specifically provided in this Memorandum of Understanding.
9. The scope of activity required by this Memorandum of Understanding will include the following upgrade activity (ies) (list all UST systems (piping and tanks) covered by this Memorandum of Understanding and check the applicable upgrade activity. If only the associated piping requires upgrade, please check "Piping Only"):

a. Upgrade Activity (add more sheets as needed):

UST Size/Substance	Leak Detection	Piping Only	Spill Protection	Overfill Prevention	Corrosion Protection	Closure and Replacement

b. Completion Date _____

PENALTY

10. Upon the expiration of this Memorandum, if the Respondent(s) have failed to upgrade their underground storage tank systems in accordance with the schedule outlined above, and wish to continue use of the underground storage tank facility until upgrades can be completed, the Respondent(s) will be required to execute an Administrative Consent Order and pay a penalty for each month, or portion thereof, that the Respondent(s) site will be out of compliance beyond the expiration date of this Memorandum until upgrades are complete.

AGREEMENT

11. It is hereby agreed that the Respondent(s) shall complete the UST upgrade requirements pursuant to N.J.A.C. 7:14B, utilizing contractor(s) certified pursuant to N.J.A.C. 7:14B-13, within the timeframe noted above.

12. If the UST system(s) to be upgraded is\are located in wellhead protection area as defined at N.J.A.C. 7:14B-1.6, the Respondent(s) shall comply with N.J.A.C. 7:14B-10.2 to conduct a site investigation prior to upgrading. New UST systems installed in wellhead protection areas shall be constructed with secondary containment pursuant N.J.A.C. 7:14B-4.1(b).

13. It is hereby agreed that acceptable methods of leak detection, specified at N.J.A.C. 7:14B-6 will be maintained and suspected releases will be investigated pursuant to N.J.A.C. 7:14B-7.

14. For UST systems found to be leaking, discharge notifications will be immediately made to the NJDEP Hotline at (609) 292-7172. All discharges shall be ceased immediately by methods including, but not limited to, putting the UST system out-of-service and removing product from the UST system, repairing the UST system, etc.

15. It is further recognized that the remediation of a discharge of hazardous substances from an UST system is an obligation of the UST owner and operator, jointly and severally pursuant to N.J.S.A. 58:10-23.11 et seq., Spill Compensation and Control Act and N.J.S.A. 58:10B-1 et. seq., Underground Storage of Hazardous Substances Act, and shall be completed pursuant to N.J.A.C. 7:26E (Technical Requirements for Site Remediation).

16. Within 6 months following upgrade and remediation (if applicable and which ever is later), the Respondent(s)s shall obtain and maintain a method of financial responsibility which meets the requirements of N.J.S.A. 58:10B et seq. or 40 CFR Parts 280 and 281 to respond to releases of hazardous substances from the regulated UST systems and to perform remediation.

17. The UST Respondent(s)s shall comply with the payment of any surcharge imposed pursuant to the Underground Storage Tank Finance Act.

18. Within seven business days or sooner after completion of all required upgrades, the Respondent(s)s shall file an updated and duly certified "UST Facility Certification Questionnaire" which reflects the status of the UST system(s).

19. Within seven days of obtaining financial responsibility pursuant to paragraph 16 above, the Respondent(s) shall provide notification of financial responsibility.

20. The Respondent(s) shall submit to the Department all documents required by this Memorandum of Understanding, including correspondence relating to force majeure issues, by delivery with an acknowledgement of receipt from the Department. The date that the Department executes the acknowledgement will be the date the Department uses to determine the Respondent(s) compliance with the requirements of this Memorandum of Understanding.

21. Unless otherwise directed in writing by the Department, the Respondent(s) shall submit all payments and all documents required by this Memorandum of Understanding to the individual identified below, who shall be the Department's contact for the Respondent(s) for all matters concerning this Memorandum of Understanding:

**New Jersey Department of Environmental Protection
Bureau of State Case Management – UST Registration and Billing Unit
P.O. Box 028
401 East State Street, Floor 5
Trenton, New Jersey 08625
Attn: UST Upgrade MOU c/o Tina Layre**

22. The Department will consider a written request for an extension of time to complete any requirement in this Memorandum of Understanding, provided that the Respondent(s) submits any extension request to the Department two weeks prior to any applicable deadline to which the extension request refers.

Reservation of Rights

23. The Department agrees that it will not take any additional action on the Respondent(s) for their failure to upgrade the facility by the upgrade deadline of December 22, 1998 as long as the Respondent(s) remains in compliance with the terms and conditions of this Memorandum of Understanding.

24. The Department reserves the right to unilaterally terminate this Memorandum of Understanding in the event the Respondent(s) violates the terms of this Memorandum of Understanding provided, however, that before the Department takes this action, the Department shall notify the Respondent(s) in writing of the obligation(s) which it has not performed (with the exception of paragraph 25 below, and the Respondent(s) shall have thirty (30) calendar days after receipt of such notice, unless otherwise extended in writing by the Department, to perform such obligation(s).

25. The Department reserves the right to unilaterally terminate this Memorandum of Understanding in the event the Respondent(s) knowingly allows an ongoing discharge of hazardous substances. However, before the Department takes this action, the Department shall notify the Respondent(s) of the obligation(s) which it has not performed and the Respondent(s) shall immediately cease the discharge pursuant to Paragraph 13 above, unless otherwise extended in writing by the Department, to perform such obligation(s).

26. Nothing in this Memorandum of Understanding shall preclude the Department from seeking civil or civil administrative penalties or any other legal or equitable relief against the Respondent(s) for violations of this Memorandum of Understanding. In any such action brought by the Department under this Memorandum of Understanding for injunctive relief, civil, or civil administrative penalties, the Respondent(s) may raise, among other defenses, a defense that the Respondent(s) failed to comply with a decision of the Department, made pursuant to this Memorandum of Understanding, on the basis that the Department's decision was arbitrary, capricious or unreasonable. If the Respondent(s) is successful in establishing such a defense based on the administrative record, the Respondent(s) shall not be liable for penalties for failure to comply with that particular requirement of the Memorandum of Understanding. Although the Respondent(s) may raise such defenses in any action initiated by the Department for injunctive relief, the Respondent(s) hereby agrees not to otherwise seek review of any decision made or to be made by the Department pursuant to this Memorandum of Understanding and under no circumstances shall the Respondent(s) initiate any action or proceeding challenging any decision made or to be made by the Department pursuant to this Memorandum of Understanding.

27. This Memorandum of Understanding shall not be construed to affect or waive the claims of Federal or State natural resources trustees against any person for damages or injury to, destruction of, or loss of natural resources, unless expressly provided herein, and then only to the extent expressly provided herein.

Force Majeure

28. If any event specified in the following paragraph occurs which the Respondent(s) believes or should believe will or may cause delay in the compliance or cause non-compliance with any provision of this Memorandum of Understanding, the Respondent(s) shall notify the Department in writing within seven (7) calendar days of the start of delay or knowledge of the anticipated delay, as appropriate, referencing this paragraph and describing the anticipated length of the delay, the precise cause or causes of the delay, any measures taken or to be taken to minimize the delay, and the time

required to take any such measures to minimize the delay. The Respondent(s) shall take all necessary action to prevent or minimize any such delay.

29. The Department will extend in writing the time for performance for a period no longer than the delay resulting from such circumstances as determined by the Department only if:

- (a) The Respondent(s) has complied with the notice requirements of the preceding paragraph;
- (b) Any delay or anticipated delay has been or will be caused by fire, flood, riot, strike or other circumstances beyond the control of the Respondent(s); and
- (c) The Respondent(s) has taken all necessary action to prevent or minimize any such delay.

30. The burden of proving that any delay is caused by circumstances beyond the control of the Respondent(s) and the length of any such delay attributable to those circumstances shall rest with the Respondent(s).

31. "Force Majeure" shall not include the following:

- (a) Delay in an interim requirement with respect to the attainment of subsequent requirements;
- (b) Increases in the cost or expenses incurred by the Respondent(s) in fulfilling the requirements of this Memorandum of Understanding;
- (c) Contractor's breach, unless the Respondent(s) demonstrates that such breach falls within the above paragraphs; and
- (d) Failure to obtain access required to implement this Memorandum of Understanding, unless denied by a court of competent jurisdiction.

Dispute Resolution

32. In the event a conflict arises between the Respondent(s) and the Department, the Respondent(s) may institute the Department's dispute resolution process at N.J.A.C. 7:26C-1.4.

General Provisions

33. In addition to the Department's statutory and regulatory rights to enter and inspect, the Respondent(s) shall allow the Department and its authorized representatives access to all areas of the site the Respondent(s) has access to at all times for the purpose of monitoring the Respondent(s) compliance with this Memorandum of Understanding.

34. The Respondent(s) shall not construe any informal advice, guidance, suggestions, or comments by the Department, or by persons acting on behalf of the Department, as relieving the Respondent(s) of its obligation to obtain written approvals as required herein.

35. The Respondent(s) shall perform all work conducted pursuant to this Memorandum of Understanding in accordance with prevailing professional standards utilizing contractors certified pursuant to N.J.A.C. 7:14B-13.

36. The Respondent(s) shall provide a copy of this Memorandum of Understanding to each contractor and subcontractor retained to perform the work required by this Memorandum of Understanding and shall condition all contracts and subcontracts entered for the performance of such work upon compliance with the terms and conditions of this Memorandum of Understanding. The Respondent(s) shall be responsible to the Department for ensuring that its contractors and subcontractors perform the work herein in accordance with this Memorandum of Understanding.

37. The Respondent(s) shall conform all actions required by this Memorandum of Understanding with all applicable federal, State and local laws and regulations.

38. Nothing in this Memorandum of Understanding shall relieve the Respondent(s) from complying with all other applicable laws and regulations. Compliance with the terms of this Memorandum of Understanding shall not excuse the Respondent(s) from obtaining and complying with any applicable federal, state or local permits, statutes, regulations and/or orders while carrying out the obligations imposed by this Memorandum of Understanding. This Memorandum of Understanding shall not preclude the Department from requiring that the Respondent(s) obtain and comply with any permits, and/or orders issued by the Department under the authority of the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq., and the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et seq., for the matters covered herein. The terms and conditions of any such permit shall not be preempted by the terms and conditions of this Memorandum of Understanding if the terms and conditions of any such permit

are more stringent than the terms and conditions of this Memorandum of Understanding

39. All permits required by this Memorandum of Understanding and approved in writing by the Department are incorporated herein and made a part hereof.

40. Upon the receipt of a written request from the Department, the Respondent(s) shall submit to the Department all data and information pertaining to the upgrade, operation and maintenance of the facility to determine compliance with the Memorandum of Understanding.

41. The Respondent(s) hereby consents to and agrees to comply with this Memorandum of Understanding which shall be fully enforceable as an Order in the New Jersey Superior Court pursuant to the Department's statutory authority.

42. No modification or waiver of this Memorandum of Understanding shall be valid except by written amendment to this Memorandum of Understanding duly executed by the Respondent(s) and the Department. Any amendment to this Memorandum of Understanding shall be executed by the Department and the Respondent(s). The Department reserves the right to require the resolution of any outstanding violations of the rules or this Memorandum of Understanding prior to executing any such amendment.

43. The Respondent(s) waives its rights to an administrative hearing concerning the entry of this Memorandum of Understanding.

44. This Memorandum of Understanding shall be governed and interpreted under the laws of the State of New Jersey.

45. If any provision of this Memorandum of Understanding or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Memorandum of Understanding or the application of such provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each provision of this Memorandum of Understanding shall be valid and enforced to the fullest extent permitted by law.

46. This Memorandum of Understanding represents the entire integrated agreement between the Department and the Respondent(s) concerning the facility subject to this Memorandum of Understanding and supersedes all prior negotiations, representations or agreements, either written or oral, unless otherwise specifically provided herein.

47. This Memorandum of Understanding shall be binding, jointly and severally, on each party, its successors, assignees and any trustee in bankruptcy or receiver appointed pursuant to a proceeding in law or equity. No change in the ownership or corporate status of any party or of the facility or Site shall alter the UST Owner's and Operator's responsibilities under this Memorandum of Understanding.

48. The Respondent(s) shall preserve, pursuant to N.J.A.C 7:14B, all data and information, including technical records, potential evidentiary documentation and contractual documents, in its possession or in the possession of their divisions, employees, agents, accountants, contractors, or attorneys which relate in any way to compliance with the upgrade, operation and maintenance of the facility.

49. The Respondent(s) shall provide to the Department written notice of the dissolution of its corporate or partnership identity, the liquidation of the majority of its assets or the closure, termination or transfer of operations in accordance with the schedule set forth at N.J.A.C. 7:26B-3.2 prior to such action. The Respondent(s) shall also provide written notice to the Department of a filing of a petition for bankruptcy no later than the first business day after such filing. These requirements shall be in addition to any other statutory requirements arising from the dissolution of corporate or partnership identity, the liquidation of the majority of assets, or the closure, termination or transfer of operations.

50. Except as otherwise set forth herein, by the execution of this Memorandum of Understanding the Department does not release the Respondent(s) from any liabilities or obligations the Respondent(s) may have pursuant to any other authority, nor does the Department waive any of its rights or remedies pursuant thereto.

51. The Respondent(s) may assert a claim of confidentiality for any information submitted by the Respondent(s) pursuant to this Memorandum of Understanding, by following the Department's procedures in N.J.A.C. 7:14A-11.

52. The Respondent(s) shall submit to the Department, along with the executed original Memorandum of Understanding, documentary evidence such as a resolution or a certification, that the signatory has the authority to bind the Respondent(s) to the terms of this Memorandum of Understanding, but shall not include contractors or consultants.

53. This Memorandum of Understanding shall be effective upon the execution of this Memorandum of Understanding by the Department and the Respondent(s). The Respondent(s) shall return two original signed copies Memorandum of Understanding to the Department for Department execution together with the signature authorization required by Paragraph 52 above.

NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION

Date:_____

BY: _____
Ronald T. Corcory, Assistant Director
Responsible Party Cleanup Element

NAME OF COMPANY/PERSON EXECUTING THE ORDER

Date:_____

BY: _____
Signature

Print Full Name Signed Above

Title

Company